

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Julian Phillips	Team: Squad #6	CCRB Case #: 201809909	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/27/2018 6:20 PM	Location of Incident: § 87(2)(b)	Precinct: 113	18 Mo. SOL 5/27/2020	EO SOL 1/11/2021	
Date/Time CV Reported Thu, 11/29/2018 9:47 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 11/29/2018 9:47 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM David Fitchik	16674	957591	113 PCT
2. POM Ariel Klepadlo	24084	964096	113 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Ariel Klepadlo	Discourtesy: On November 27, 2018, in the vicinity of § 87(2)(b) in Queens, Police Officer Ariel Klepadlo spoke discourteously to § 87(2)(b)	§ 87(2)(b)
B.POM David Fitchik	Discourtesy: On November 27, 2018, in the vicinity of § 87(2)(b) in Queens, Police Officer David Fitchik spoke discourteously to § 87(2)(b)	§ 87(2)(b)
C.POM David Fitchik	Abuse: On November 27, 2018, in the vicinity of § 87(2)(b) in Queens, Police Officer David Fitchik searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
D.POM David Fitchik	Abuse: On November 27, 2018, in the vicinity of § 87(2)(b) in Queens, Police Officer David Fitchik seized § 87(2)(b)'s property.	§ 87(2)(b)
E.POM Ariel Klepadlo	Abuse: On November 27, 2018, in the vicinity of § 87(2)(b) in Queens, Police Officer Ariel Klepadlo seized § 87(2)(b)'s property.	§ 87(2)(b)
F.POM David Fitchik	Abuse: On November 27, 2018, in the vicinity of the 113 Precinct stationhouse in Queens, Police Officer David Fitchik searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
G.POM Ariel Klepadlo	Abuse: On November 27, 2018, in the vicinity of the 113 Precinct stationhouse in Queens, Police Officer Ariel Klepadlo searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)

Case Summary

On November 29, 2018, § 87(2)(b) filed this complaint with the CCRB via telephone.

On November 27, 2018 at approximately 6:20 p.m., Police Officer David Fitchik and Police Office Ariel Klepadlo, both of the 113th Precinct, observed § 87(2)(b) drive approximately one block before parking in his driveway, located at § 87(2)(b) in Queens. The officers approached § 87(2)(b). In the ensuing conversation, PO Klepadlo allegedly said to § 87(2)(b) “You’re a grown-ass man,” and PO Fitchik allegedly said to § 87(2)(b) “Fuck that” (**Allegations A and B: Discourtesy, § 87(2)(g)**). PO Fitchik allegedly searched § 87(2)(b)’s vehicle in his driveway (**Allegation C: Abuse of Authority, § 87(2)(g)**). PO Fitchik and PO Klepadlo seized § 87(2)(b)’s vehicle and transported it to the 113th Precinct stationhouse (**Allegations D and E: Abuse of Authority, § 87(2)(g)**). At the stationhouse, PO Fitchik and PO Klepadlo searched § 87(2)(b)’s vehicle (**Allegations F and G: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) was arrested and charged with obstructing governmental administration and several moving violations.

There was no video footage of this incident.

An attorney was consulted for this case.

Findings and Recommendations

Allegation (A) Discourtesy: On November 27, 2018, in the vicinity of § 87(2)(b) in Queens, Police Officer Ariel Klepadlo spoke discourteously to § 87(2)(b)

Allegation (B) Discourtesy: On November 27, 2018, in the vicinity of § 87(2)(b) in Queens, Police Officer David Fitchik spoke discourteously to § 87(2)(b)

§ 87(2)(b) testified (Board Review 01) that he drove to his residence without committing any moving violations, parked in his driveway, and exited his vehicle. PO Fitchik and PO Klepadlo approached § 87(2)(b) as he was walking from his parked vehicle to the door of his residence. § 87(2)(b) stated that, after the officers requested his license and registration, he stated that he needed to call his mother and that the officers were trespassing on his property. PO Klepadlo responded, “You’re a grown-ass man—what do you need to call your mother for?” PO Fitchik responded, “Trespassing—fuck that.”

PO Klepadlo testified (Board Review 02) that § 87(2)(b) drove past the officers at the intersection of § 87(2)(b) and § 87(2)(b). § 87(2)(b) failed to yield to a stop sign, turned onto § 87(2)(b), and immediately pulled into his driveway. The officers decided to stop § 87(2)(b) to address his failure to yield to a stop sign. During the ensuing conversation, the officers responded to § 87(2)(b)’s contention that they were trespassing on § 87(2)(b)’s property by explaining that they were conducting a vehicle stop. PO Klepadlo did not report that the officers responded verbally to § 87(2)(b)’s announcement that he needed to call his mother. PO Klepadlo denied saying, “You’re a grown-ass man—what do you need to call your mother for?” PO Klepadlo denied that PO Fitchik said, “Trespassing—fuck that.”

PO Fitchik's testimony (Board Review 03) was largely consistent with that of PO Klepadlo, although PO Fitchik stated that, in addition to observing § 87(2)(b) fail to yield to a stop sign, PO Fitchik suspected § 87(2)(b) of speeding and driving with a modified muffler. PO Fitchik denied saying, "Trespassing—fuck that," and further denied that PO Klepadlo said, "You're a grown-ass man—what do you need to call your mother for?"

§ 87(2)(g)

Allegation (C) Abuse of Authority: On November 27, 2018, in the vicinity of § 87(2)(b) in Queens, Police Officer David Fitchik searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) testified that, after a brief argument, PO Fitchik and PO Klepadlo placed him under arrest and escorted him to a police vehicle. Immediately thereafter, § 87(2)(b) observed PO Fitchik enter the front driver-side door of his vehicle and look underneath a seat. § 87(2)(b) was unable to see if PO Fitchik did anything else inside the vehicle.

PO Fitchik and PO Klepadlo denied that any search was conducted of § 87(2)(b)'s vehicle at the scene of his arrest, and they both specifically denied that PO Fitchik looked underneath a seat within § 87(2)(b)'s vehicle.

§ 87(2)(g)

Allegation (D) Abuse of Authority: On November 27, 2018, in the vicinity of § 87(2)(b) in Queens, Police Officer David Fitchik seized § 87(2)(b)'s property.

Allegation (E) Abuse of Authority: On November 27, 2018, in the vicinity of § 87(2)(b) in Queens, Police Officer Ariel Klepadlo seized § 87(2)(b)'s property.

It is undisputed that, after § 87(2)(b)'s arrest, PO Fitchik and PO Klepadlo seized § 87(2)(b)'s vehicle and transported the vehicle from § 87(2)(b)'s driveway to the 113th Precinct stationhouse.

PO Fitchik testified that he and PO Klepadlo decided to transport § 87(2)(b)'s vehicle to the stationhouse, rather than leaving it parked in § 87(2)(b)'s driveway, for the following reasons: the vehicle had been used in the commission of moving violations, the officers had been unable to locate the vehicle's registration card, and PO Fitchik wished to conduct a search the vehicle. PO Fitchik specifically stated that he wished to search the vehicle because, based on the fact that § 87(2)(b) had walked away from the vehicle at a rapid pace after parking it in the driveway, PO Fitchik suspected that there may have been "something else going on."

PO Klepadlo testified that he and PO Fitchik decided to transport § 87(2)(b)'s vehicle to the stationhouse, rather than leaving it parked in § 87(2)(b)'s driveway, because § 87(2)(b) had been "driving it—it was part of the crime." PO Klepadlo further stated that he did not recall what, if anything, he intended to do with § 87(2)(b)'s

vehicle at the stationhouse. PO Klepadlo did not recall whether the officers ever suspected the vehicle to contain contraband.

Courts have long held, as in People v. Tardi, 28 N.Y.3d 1077 (2016) (Board Review 04), that officers may seize an arrested defendant's vehicle in order to ensure the safety of the vehicle and the general public in keeping with a community caretaking function, but not to search for evidence of further criminal activity. Courts have further clarified, as in People v. Francis, 12 Misc.3d 781 (2006) (Board Review 05), that community caretaking functions include impounding a vehicle to prevent traffic congestion, a parking violation, or a road hazard.

§ 87(2)(g)

Allegation (F) Abuse of Authority: On November 27, 2018, in the vicinity of the 113 Precinct stationhouse in Queens, Police Officer David Fitchik searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (G) Abuse of Authority: On November 27, 2018, in the vicinity of the 113 Precinct stationhouse in Queens, Police Officer Ariel Klepadlo searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) testified that, while he was inside the stationhouse, he overheard officers discussing a search of his vehicle.

PO Fitchik testified that, after lodging § 87(2)(b) in the holding cells, he and PO Klepadlo searched § 87(2)(b)'s vehicle for contraband and for the vehicle's registration card. PO Fitchik specifically stated that the officers searched the vehicle's trunk, glove compartment, and beneath the seats.

PO Klepadlo testified that he did not recall any search conducted of § 87(2)(b)'s vehicle at the stationhouse.

No property vouchers or other documentation was prepared recording the officers' seizure of § 87(2)(b)'s vehicle.

The NYPD Patrol Guide, Procedure 218-13 (Board Review 06), states that, "[w]henver any property comes into the custody of this department an inventory search will be conducted. The Procedure specifies that, if the property in question includes a vehicle, officers should "[s]earch the interior of the vehicle thoroughly."

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 07).

- PO Fitchik has been a member of service for four years and has been a subject in three CCRB complaints and five allegations, none of which was substantiated.
 - In case 201808709, PO Fitchik was alleged to have seized a parked vehicle that he had reportedly seen commit a moving violation several days previously. To date, this investigation is still open.
 - In case 201900375, PO Fitchik was alleged to have searched a vehicle that he had stopped for committing a moving violation. To date this investigation is still open.
- PO Klepadlo has been a member of service for one year and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of March 14, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 08).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 09).

Squad No.: _____

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer: _____

Signature	Print Title & Name	Date
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